

§ 70.151

27 CFR Ch. I (4–1–01 Edition)

is effective if filed in the office of the clerk of the United States district court for the judicial district in which the State office where the notice of lien is filed is situated.

(26 U.S.C. 6325)

§ 70.151 Administrative appeal of the erroneous filing of notice of Federal tax lien.

(a) *In general.* Any person may appeal to the official who filed the Federal tax lien on the property or rights to property of such person for a release of lien alleging an error in the filing of notice of lien. Such appeal may be used only for the purpose of correcting the erroneous filing of a notice of lien, not to challenge the underlying tax liability that led to the imposition of a lien.

(b) *Certificate of Release.* If the official who filed the lien determines that the filing of the notice of any lien was erroneous that official shall expeditiously, and to the extent practicable, within 14 days after such determination, issue a certificate of release of lien. The certificate of release of such lien shall include a statement that the filing of notice of lien was erroneous.

(c) *Appeal alleging an error in the filing of notice of lien.* For purposes of paragraph (a) of this section, an appeal of the filing of notice of Federal tax lien must be based on any one of the following allegations:

(1) The tax liability that gave rise to the lien, plus any interest and additions to tax associated with said liability, was satisfied prior to the filing of notice of lien;

(2) The tax liability that gave rise to the lien was assessed in violation of title 11 of the United States Code (the Bankruptcy Code); or

(3) The statutory period for collection of the tax liability that gave rise to the lien expired prior to the filing of notice of Federal tax lien.

(d) *Notice of Federal tax lien that lists multiple liabilities.* When a notice of Federal tax lien lists multiple liabilities, a person may appeal the filing of notice of lien with respect to one or more of the liabilities listed in the notice, if the notice was erroneously filed with respect to such liabilities. If a notice of Federal tax lien was erroneously filed with respect to one or more liabilities

listed in the notice, the official who filed the Federal tax lien shall issue a certificate of release with respect to such liabilities.

(e) *Procedures for appeal*—(1) *Manner.* An appeal of the filing of notice of Federal tax lien shall be made in writing to the official who filed the lien.

(2) *Form.* The appeal shall include the following information and documents:

(i) Name, current address, and taxpayer identification number of the person appealing the filing of notice of Federal tax lien;

(ii) A copy of the notice of Federal tax lien affecting the property, if available; and

(iii) The grounds upon which the filing of notice of Federal tax lien is being appealed.

(A) If the ground upon which the filing of notice is being appealed is that the tax liability in question was satisfied prior to the filing, proof of full payment as defined in paragraph (f) of this section must be provided.

(B) If the ground upon which the filing of notice is being appealed is that the tax liability that gave rise to the lien was assessed in violation of title 11 of the United States Code (the Bankruptcy Code), the appealing party must provide the identity of the court, the district in which the bankruptcy petition was filed, a docket number and the date of filing of the bankruptcy petition.

(3) *Time.* An administrative appeal of the erroneous filing of notice of Federal tax lien shall be made within 1 year after the taxpayer becomes aware of the erroneously filed tax lien.

(f) *Proof of full payment.* As used in paragraph (e)(2)(iii)(A) of this section, the term “proof of full payment” means:

(1) A Bureau of Alcohol, Tobacco and Firearms receipt reflecting full payment of the tax liability in question prior to the date the Federal tax lien was filed;

(2) A cancelled check payable to the Bureau of Alcohol, Tobacco and Firearms in an amount which was sufficient to satisfy the tax liability for which release is being sought; or

(3) Any other manner of proof acceptable to the official who filed the lien.

(g) *Exception.* Whenever necessary to protect the interests of the government, the regional director (compliance) of the region in which a notice of Federal tax lien was filed or the Chief, Tax Processing Center other than the official who filed the lien, may receive and act on an administrative appeal of a lien in accordance with this section.

(h) *Exclusive remedy.* The appeal established by section 6326 of the Internal Revenue Code and by this section shall be the exclusive administrative remedy with respect to the erroneous filing of a notice of Federal tax lien.

[T.D. ATF-316, 56 FR 55079, Oct. 24, 1991]

SEIZURE OF PROPERTY FOR COLLECTION OF TAXES

§ 70.161 Levy and distraint.

(a) *Authority to levy—(1) In general.* If any person liable to pay any tax neglects or refuses to pay the tax within 10 days after notice and demand, the regional director (compliance) or Chief, Tax Processing Center who initiated the assessment (or, on that official's request, any other regional director (compliance) or the Chief, Tax Processing Center) may proceed to collect the tax by levy, provided the taxpayer has been furnished the notice described in § 70.162(a) of this part. The regional director (compliance) or the Chief, Tax Processing Center may levy upon any property, or rights to property, whether real or personal, tangible or intangible, belonging to the taxpayer. The regional director (compliance) or the Chief, Tax Processing Center may also levy upon property with respect to which there is a lien provided by 26 U.S.C. 6321 for the payment of the tax. For exemption of certain property from levy, see 26 U.S.C. 6334 and §§ 70.241 through 70.245 of this part. As used in 26 U.S.C. 6331 and this section, the term "tax" includes any interest, additional amount, addition to tax, or assessable penalty, together with costs and expenses. Property subject to a Federal tax lien which has been sold or otherwise transferred by the taxpayer may be seized while in the hands of the transferee or any subsequent transferee. However, see 26 U.S.C. 6323(i)(2) and § 70.144 of this part concerning the subrogation rights of certain trans-

ferees. Levy may be made by serving a Notice of Levy on any person in possession of, or obligated with respect to, property or rights to property subject to levy, including receivables, bank accounts, evidences of debt, securities, and salaries, wages, commissions, or other compensation. Except as provided in § 70.162(c) of this part with regard to a levy on salary or wages, a levy extends only to property possessed and obligations which exist at the time of the levy. Obligations exist when the liability of the obligor is fixed and determinable although the right to receive payment thereof may be deferred until a later date. For example, if on the first day of the month a delinquent taxpayer sold personal property subject to an agreement that the buyer remit the purchase price on the last day of the month, a levy made on the buyer on the 10th day of the month would reach the amount due on the sale, although the buyer need not satisfy the levy by paying over the amount to the regional director (compliance) or the Chief, Tax Processing Center until the last day of the month. Similarly, a levy only reaches property in the possession of the person levied upon at the time the levy is made. For example, a levy made on a bank with respect to the account of a delinquent taxpayer is satisfied if the bank surrenders the amount of the taxpayer's balance at the time the levy is made, including interest thereon to the date of surrender. The levy has no effect upon any subsequent deposit made in the bank by the taxpayer. Subsequent deposits may be reached only by a subsequent levy on the bank.

(2) *Jeopardy cases.* If the regional director (compliance) or the Chief, Tax Processing Center finds that the collection of any tax is in jeopardy, that official may make notice and demand for immediate payment of such tax and, upon failure or refusal to pay such tax, collection thereof by levy shall be lawful without regard to the 10-day period provided in 26 U.S.C. 6331(a) or the 30-day period provided in 26 U.S.C. 6331(d).

(3) *Bankruptcy or receivership cases.* During a bankruptcy proceeding or a receivership proceeding in either a Federal or a State court, the assets of the taxpayer are in general under the